The Solicitors' Journal

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Current Topics.

The Lord Chancellor's Committee on Legal Education.

THE NAMES of the members of the Lord Chancellor's Committee on legal education have been published. It is a well-chosen body in which, as might have been expected, the academic element largely predominates. We should have thought that more than one practising solicitor might have been appointed, but Mr. T. H. BISCHOFF will ably represent that branch of the profession, whilst Mr. GAVIN SIMONDS, K.C., and Mr. T. HOWARD WRIGHT are members who are in actual practice at the bar. The Committee is to consider the organisation of legal education in England with a view to (*a*) closer co-ordination between the work done by the Universities and the professional bodies; and (*b*) further provision for advanced research in legal studies. There has of late years been a great improvement in the provision made for legal education for students desiring to be called to the Bar or admitted as solicitors, especially, we think, in The Law Society's School of Law and the provincial schools. Those schools and the Council of Legal Education may well be left to develop on their own lines. There is none the less much overlapping with the Universities, and the object which the Lord Chancellor has in view does not appear to be anything in the nature of amalgamation, but a co-ordination which will be of benefit to all. Any arrangement which can be made for bringing the various schools into closer relation cannot fail to be of advantage. It will not be an easy task to devise a workable system which will achieve the end in view, but we have little doubt that it can be done. The further duty of the Committee will be to suggest methods by which advanced research in legal studies may be provided for and encouraged. There can be no doubt of the desirability of better provision in that direction, and there should be no serious obstacle in the way of doing it. The field here is a wide one and should prove fruitful of good results. The personnel of the Committee, with Lord ATKIN as chairman, will command the confidence of the profession as a whole, and its recommendations will be awaited with much interest.

Unpaid Bills.

DURING THE last week or two the subject of unpaid bills, and the hardship thereby caused to deserving tradesmen, which has been running a good second to letters on "the manly chest," in the columns of *The Times*, has evoked a number of interesting communications, the majority of the writers denouncing the practice of leaving bills unpaid for an unconscionable time, or, it may be, for ever, although several point out that the remedy for this state of things lies with the tradesmen themselves who foolishly forbear to insist on ready money terms. The theme of unpaid bills has engaged the attention of tradesmen of each generation, although they continue to give almost unlimited credit to those who take full advantage of this laxity. Was it not SHERIDAN who said that the family name ought to have been O'SHERIDAN, for its members had always owed everybody? Even those in the high places of the law have been known to share the disinclination to make prompt payment for goods supplied to them. Of this a curious story has come down to us of a Victorian Chancellor, who, having intimated in one case, *obiter*, that if tradesmen left goods without insisting on payment they had only themselves to thank if they lost thereby. A certain tradesman having read this in one of the public prints made a mental jotting of the sensible dictum and resolved to put it in practice. Shortly afterwards the Chancellor entered his shop and ordered goods to be delivered at his house. A messenger was accordingly sent and instructed not to leave them without getting payment. When he proffered this condition of leaving the articles, indignation was painted on the countenance of the footman, next on that of the butler, and when the Chancellor was himself told of the incident he appeared on the scene and so hectored the poor messenger that, terrified of the consequences, he meekly left the goods without being paid. The tradesman wrote to the judicial dignitary explaining that but for his own advice on the subject he should not have dreamt of requesting payment at the door; that, moreover, he really supposed that the Chancellor preferred to have this system adopted in his household; and he concluded with a hope that he would not be offended. "However," said the disillusioned tradesman, "his lordship took no notice of my letter, and actually kept me waiting two years for my money"! As he who told the story many years ago said: "Moral. Be chary of judicial precepts, even when they emanate from a Chancellor."

Musk Rats.

THE Board of Agriculture and Fisheries promise to play the part of a modern pied piper with regard to a new rat menace. Recently the Board promulgated the Musk Rat (Importation and Keeping) Regulations, 1932 (Statutory Rules and Order, 1932, No. 154), and on 11th August the first prosecution under the regulations was heard at Farnham Petty Sessions in *R.* v. *Wallace*. Under the regulations the importation of musk rats is prohibited except under licence, and precautions must be taken against their escape. The defendant was charged with a breach of regulation 6, which provides that the holder of a licence should keep records of the number of musk rats kept, including the number born, purchased or otherwise acquired, or musk rats which might die, be killed, sold, or otherwise disposed of, and such records should at all times be available for inspection by any officer or person duly authorised by the Ministry or the Department of Agriculture. The defendant was found guilty of having broken the regulation on two occasions, and was fined £1 in the first case and £5 in the second, and £3 costs were allowed to the prosecution. It appears that the musk rat provides the human race with the musquash fur. Harassed husbands may deem this a sufficient reason for its extermination, but

the actual ground for its inclusion in the category of pest is that it multiplies very rapidly and honeycombs the banks of rivers, canals, reservoirs and drainage works with its borings thus constituting a serious menace to the waterways and waterworks of the country. The Destructive Imported Animals Act, 1932, under which the regulations were made, was passed on 17th March in order "to make provisions for prohibiting or controlling the importation into and the keeping within Great Britain of destructive non-indigenous animals which may be at large and for purposes connected with the matters aforesaid." Section 1 empowers the Minister of Agriculture and Fisheries and the Secretary of State for Scotland, acting jointly, to prohibit by order, either absolutely, or except under licence granted under the Act, the importation into and the keeping within Great Britain of any animal of the species designated *Fiber zibethicus* or *Ondatra zibethica*, commonly known as the musk rat, or musquash. The regulations made under the Act came into operation on 1st May. Thus the activities of the "little rat that borest in the dyke," to use TENNYSON's apt words, have been, if not actually terminated, brought under a rigorous state control.

The Right of the Unbaptised to Marriages in Church.

THE BISHOP of St. Albans appears to have made a rule that the solemnisation of marriage in churches in his diocese shall be performed only when the parties are baptised persons. In the recent case where the point has arisen, the unbaptised person has, we learn, consented to submit to the ceremony, so the veto cannot be tested. In fact, the point still appears open to doubt. Any person whom his parish priest (or the incumbent of his fiancée's parish) refuses to marry may have three several remedies, namely, ecclesiastical prosecution, criminal prosecution, and civil action, and all have been tried with inconclusive results. *Argar* v. *Holdsworth* (1758), 2 Lee 515, was an ecclesiastical prosecution, in which it was established that a clergyman, who refused to marry pursuant to a proper licence from his ordinary, was subject to discipline, but there was no defence arising on lack of baptism or other qualification. *R.* v. *Moorhouse James* (1850), 3 Car. & K. 167, was an ordinary criminal prosecution on the same ground, but it fell through because it was not proved that the clergyman was called upon to perform the ceremony at a time when he was free to do so. *Davies* v. *Black* (1841), 1 Q.B. 900, was an action by a man whose fiancée had died while the clergyman had been delaying the marriage, but the declaration failed on the technical ground that he had no notice that both the parties desired marriage. On the main question the judges appeared to be uncertain. The ecclesiastical law as to the marriage of dissenters in church was left open in *Jenkins* v. *Barrett* (1827), 2 Hag. Ecc. 12 (see p. 21). The above cases are cited in the more recent text-books, *cf.* "Cripps," 7th ed., p. 611; "Blunt's Church Law," 11th ed., pp. 150-151; and thus the matter is left open. The rubric of the Church service provides for possible but not compulsory administration of Holy Communion to the bride and bridegroom, with perhaps some implication that the parties should be not only baptised but confirmed. This administration was originally compulsory, but, according to Blunt's note on p. 274 of his "Annotated Book of Common Prayer," was changed in deference to the objections of the Puritans.

The Extra-territorial Jurisdiction of Dominion Parliaments.

Croft v. *Dunphy*, *The Times*, 29th July, a Privy Council case, arose on the seizure by the appellant, under the Canadian Customs Acts of 1927 and 1928, of a ship, registered in Canada, and belonging to the respondent. These Acts provide that vessels hovering in the territorial waters of Canada, defined as within twelve miles of the shore, may be boarded and searched by Customs officers, and, if certain dutiable or prohibited articles are found thereon, shall be forfeited. The respondent's vessel was boarded not quite twelve miles off the coast by the appellant, a Customs officer, and, being found to contain assorted liquors as cargo, was confiscated. The lower court, and then the Supreme Court of Nova Scotia, held the confiscation lawful, but their decision was reversed by the Supreme Court of Canada. The Privy Council has now restored the Nova Scotian decisions. The point considered was whether the above legislation, being extra-territorial so far as its scope was outside the ordinary three-mile limit from the coast, was *intra vires* the Canadian Legislature. The Board held that, the Dominion Parliament having plenary powers given to it in relation to customs by the British North America Act, 1867, had also and impliedly such extra-territorial powers as might reasonably be regarded as necessary to the efficacy of a Customs law. On principle, the decision followed *Attorney-General for Canada* v. *Cain* [1906] A.C. 342, in which it was held that the power to exclude and deport aliens included the application of such force outside the Dominion as might be necessary to ensure that a deportee should be landed in his native country, if not bordering on the Dominion. The present judgment resting on the British North America Act, 1867, it was not necessary to decide the question of even wider interest, namely, whether s. 3 of the Statute of Westminster, 1931, which declares and enacts that Dominion Parliaments have full power to make laws having extra-territorial operation, is retrospective or otherwise. The use of the phrase "it is declared" may make a statute retrospective, but does not necessarily do so; see *Harding* v. *Commissioners of Queensland* [1898] A.C. 769, at pp. 775-6. The preface "for the removal of doubts" would, of course, strongly indicate retrospective action: see *Re Lovell and Collards Contract* [1907] 1 Ch. 249. It is to be noted that the vessel seized was not a foreign one, so no question of international law or comity arose.

Caravan Dwellers and Nuisance.

A NOVEL application of the well-known doctrine propounded by Lord CAIRNS in *Rylands* v. *Fletcher* (1868), L.R. 3, H.L. 330, came before Mr. Justice BENNETT on 28th July in *Att.-Gen.* v. *Corke* (76 SOL.J. 593). The defendant had, about two years before the present proceedings, permitted persons at a charge varying from 5s. to 10s. a week, to place caravans on a disused brickfield belonging to him and to live in them. At the beginning of 1932 there were fifty-nine caravans on the field, and its total population amounted to 200 or 300 men, women and children. It was alleged that the occupation of the field constituted a nuisance to the neighbours in that the caravan dwellers made a noise at night, especially on Saturday nights, when returning from the neighbouring public-houses, that they trespassed over the property of neighbours in order to take short cuts, and that they did not keep their horses under sufficient control. His lordship held that the defendant was responsible for the nuisance that undoubtedly existed in the vicinity of the camp, as in bringing people on to the land in caravans he was putting his land to an abnormal use, and on the principle of *Rylands* v. *Fletcher*, *supra*, he owed a duty to the community to see that those people did nothing to endanger the health of their neighbours or to interfere with their comfort. Lord CAIRNS in *Rylands* v. *Fletcher*, *supra*, stated the rule of law to be that "the neighbour who has brought something on his own property, which was not naturally there, harmless to others so long as it was confined to his own property, but which he knows will be mischievous if it gets on to his neighbour's should be obliged to make good the damage which ensues if he does not succeed in confining it to his own property . . . Upon authority, this, we think, is established to be the law, whether the things so brought be beasts, or water, or filth, or stenches." The responsibility for damage occasioned by the abnormal user of property is well established: *Robinson* v. *Kilvert*, 41 Ch. D. 88, *Eastern and South African Telegraph Co.* v. *Cape Town Tramways Co.* [1902] A.C. 381, but the classing of *homo sapiens* with beasts, water, filth, and stenches is, to say the least, unusual.

Section 82 of the Bills of Exchange Act, 1882.

SOME RECENT CASES ON NEGLIGENCE.

SECTION 82 provides: "Where a banker in good faith and without negligence receives payment for a customer of a cheque crossed generally or specially to himself, and the customer has no title or a defective title thereto, the banker shall not incur any liability to the true owner of the cheque by reason only of having received such payment."

It will be observed that this section gives a limited protection to a collecting banker where, otherwise, he would be liable to the true owner in an action for conversion. The position of a banker seeking the protection of the section was succinctly stated by ATKIN, L.J., in *Importers Co. Ltd.* v. *Westminster Bank* [1927] 2 K.B. 297, at p. 306, as follows: "The onus of bringing themselves within the section, I think, rests upon them (the bankers), and they have to show that they, in good faith and without negligence, received payment for a customer of a crossed cheque."

The question whether a banker has acted negligently is, of course, one of fact, but the general legal principles to be considered in determining this question appear from the judgment of Lord DUNEDIN in *Commissioners of Taxation* v. *English, Scottish and Australian Bank* [1920] A.C. 683, at p. 688. This case was decided on s. 88 (1) of the (Commonwealth) Bills of Exchange Act, 1909, which is similar in terms to s. 82 of the Act of 1882. The principles laid down by Lord DUNEDIN are:—

(1) That the question should in strictness be determined separately with regard to each cheque;

(2) That the test of negligence is whether the transaction of paying-in any given cheque coupled with the circumstances antecedent and present was so out of the ordinary course that it ought to have aroused doubts in the bankers' mind, and caused them to make enquiry;

(3) That the standard of negligence is that derived from the ordinary practice of bankers, not individuals.

Bearing these principles in mind, each case has then to be decided on its own circumstances.

In *Lloyds Bank* v. *Chartered Bank of India, Australia and China* [1928] 1 K.B. 40, cheques drawn by a bank manager with authority to draw were paid into his private account with the defendant bank. The proceeds were then quickly withdrawn, and paid to stockbrokers. It was held that the defendant bank were negligent in not making enquiry. SCRUTTON, L.J., at p. 59, adopted the statement of Lord DUNEDIN in *Commissioners of Taxation* v. *English, Scottish and Australian Bank*, as to the measure of duty in this class of case; but he qualified it, as also did Lord DUNEDIN, with the observation that to require a thorough enquiry into the history of each cheque collected would render banking business impossible. "There must," he said, "be something markedly irregular in the transaction."

The appellants in *Importers Co. Ltd.* v. *Westminster Bank* drew cheques marked "A/c payee only" in favour of certain foreign merchants, and sent the cheques to their own agent, one SCHULTZE, with instructions to hand the cheques to the merchants. SCHULTZE stole the cheques, forged the indorsements and paid them into his own account in the Oscar Heilman Bank. When the cheques came forward, they were collected for the German Bank by the respondents. In this case it was held that there was nothing to put the respondents on their enquiry.

ATKIN, L.J., at p. 308, said: ". . . it seems impossible that a very close and accurate survey of all the circumstances connected with each cheque can be expected from the clearing banker, whom I am now treating as the agent for collection." Again, he said: "All that it is necessary to say now is that the documents are such that it was quite possible, and indeed probable, that the official who scrutinised the indorsements would pass them if satisfied that the bank with whom he was dealing was in fact going to account for the proceeds to the payee mentioned on the face of the documents, or otherwise comply with such directions. That seems to me to be sufficient."

The position of a clearing banker dealing with cheques marked "a/c payee only" seems to be accurately and concisely stated in "Chalmers' Bills of Exchange," 10th ed., p. 313, note (Y). "A bank which is merely clearing a cheque marked 'a/c payee only' for another bank seems to be in order in so doing provided there are indorsements on the cheque consistent with the bank which is sending it forward holding the cheque so that it can comply with the direction."

In *Slingsby* v. *Westminster Bank* [1931] 2 K.B. 583, the facts were briefly as follows: The plaintiffs who were the executors of one H.T., deceased, employed as their solicitor one Cumberbirch, a member of the firm of Cumberbirch and Potts, and a solicitor of high repute. The executors wished to invest £5,000 of the trust money in war stock, and for that purpose intended to employ a firm of stockbrokers named John Prust & Co. A cheque was drawn on the plaintiffs' account at a branch of the district bank for £5,000, in which the payees were expressed to be "John Prust & Co. or Order," and it was duly signed by the plaintiffs as executors. The cheque was prepared by Cumberbirch and was in his handwriting, a space being left between the words "John Prust & Co.," and the words "or Order." The cheque was left by the plaintiffs with C, to be used in accordance with the directions he had received. C, however, fraudulently added the words "per Cumberbirch & Potts" in the space. He then indorsed the cheque "Cumberbirch & Potts," and paid it into the account of a finance company (of which he was chairman) with the Manchester branch of the defendant bank. The account of the finance company was credited, and the plaintiffs' account was debited, with £5,000.

FINLAY, J., held that the defendants had acted without negligence, but this decision was overruled by the Court of Appeal in *Slingsby* v. *District Bank* [1932] 1 K.B. 544, which was an action on the same facts against the paying bank. SCRUTTON, L.J., at p. 556, said: "Were it not that FINLAY, J., has held that the Westminster Bank were not negligent in making no inquiries as to why a cheque for a large amount apparently destined for Prust & Co., through the medium of Cumberbirch & Potts was paid into the private account not of that firm, but of a company of which Cumberbirch was chairman, I should be clearly of opinion that it could not be argued that the Westminster Bank were not negligent. I am of opinion . . . that the Westminster Bank were negligent . . . ."

SCRUTTON, L.J., also disapproved the decision of FINLAY, J., in *Slingsby* v. *Westminster Bank* [1931] 1 K.B. 173. In that case, Cumberbirch paid a dividend warrant signed by one of the executors into his own private account. This led to enquiries, but only to enquiries of Cumberbirch, who told an untrue story that it was the repayment of money advanced by him to the executor.

In *Midland Bank* v. *Reckitt* (1932), 76 SOL. J. 165, RECKITT claimed that he was entitled to recover from the bank the proceeds of certain cheques wrongfully drawn by Lord TERRINGTON on the plaintiff's account, and wrongfully paid into Lord TERRINGTON'S account with the defendant bank. TERRINGTON had authority to draw cheques for certain purposes under a power of attorney given by RECKITT. The House of Lords held that the defendants were negligent in not making enquiry as to their customer's authority to make the payments in question.

Another case of considerable interest is *E. B. Savory & Co.* v. *Lloyds Bank* [1932] 2 K.B. 122. The plaintiffs, a firm of stockbrokers, sued the defendants for damages for conversion of a number of cheques which, as is usual in dealings between brokers and jobbers, were crossed bearer cheques. The

cheques in question were stolen by two clerks of the plaintiffs. One had an account at a country branch of the defendants, whose officials knew that he was a stockbroker's clerk, but did not know, nor did they enquire, the name of his employers. The wife of the other had an account at another country branch of the defendants, but the officials there did not know, nor did they enquire, who or what her husband was. The clerks paid the stolen cheques into one of the defendants' city branches to be credited respectively to these accounts. In each case, they filled in a paying-in slip in the name of the payee, stating merely the name of the customer whose account was to be credited, and the amount of the cheque. This was sent to the customer's branch, the cheque being sent direct to the Clearing House, so that the officials at that branch had no opportunity of judging whether the cheque called for enquiry. Evidence was given that the system by which cheques could be paid into one branch to be credited to a customer's account at another had been operated for nearly forty years.

The Court of Appeal, reversing the decision of the court below, held that the defendants were negligent in that the receiving branch had not transmitted sufficient information to enable the customer's branch to enquire why the cheques were being paid in. SCRUTTON, L.J., also held that the branch managers did not make sufficient enquiries in opening the two customers' accounts.

GREER, L.J., at p. 148, made the following observation: "It is, I think, true to say that a banker who has not exercised reasonable care cannot claim the benefit of the section even though it may seem probable that the exercise of care would not have enabled him to discover the defective title of his customer. The protection is given to careful bankers, and any banker who does not exercise reasonable care is outside the section altogether, even though he may be able to say: 'If I had exercised care the fraud would not have been discovered.'" Dealing with the system of allowing payments into one branch for the credit of a customer of another, GREER, L.J., said: "It is capable quite easily of being made a system which would be consistent with the exercise of due care in the interests of the true owner. . . . It seems to me that the defendant bank were negligent because they did not obtain information on the slip of the names of the drawer and the payee of these cheques." This point was dealt with in an article, "Stolen Cheques and Branch Banks," in THE SOLICITORS' JOURNAL, Vol. 76, p. 280.

These cases indicate the difficulty of laying down general rules to determine what constitutes negligence. But great assistance may be derived from the judgment of Lord DUNEDIN in *Commissioners of Taxation* v. *English, Scottish and Australian Bank*.

[NOTE.—The Bills of Exchange Act (1882) Amendment Act, 1932, which received the Royal Assent on the 12th July, extends the operation of s. 82 to banker's drafts, but does not affect the question of negligence under the section. It is hoped to publish an article dealing with this Act in an early issue.—ED., *Sol. J.*]

Matrimonial Jurisdiction of Justices. Wilful Neglect to Maintain.

ANOTHER REASON WHY AN AGREEMENT NOT TO SUE IS NO BAR.

[CONTRIBUTED.]

IN *Matthews* v. *Matthews* [1932] W.N. 152; 76 SOL. J. 495; 96 J.P. 290, a learned police magistrate had to consider the effect of a separation agreement whereby the husband agreed to set up his wife in business and to pay to her £50 down and £50 more by instalments, and to make other payments on his wife's behalf, all of which payments were duly made. The agreement went on to provide: "In consideration of the agreements on the part of the husband herein, the wife agrees with the husband that so long as he observes and performs the said agreements herein on his part, the wife will not at any time hereafter make a claim or demand upon the husband for maintenance or institute any legal proceedings against him in respect thereof and will at all future times wholly support and maintain herself." The wife carried on her business until November, 1931, when she was obliged to give it up as it was unprofitable. Notwithstanding her agreement, the wife took out a summons for neglect to maintain, and the learned police magistrate made an order for maintenance thereon, being of opinion that although the complainant did agree not to make any claim or demand upon the defendant for maintenance, or institute any legal proceedings in respect thereof, that was not in itself a bar to her at any future time obtaining an order for maintenance under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1925, if she were in a position to show that she was unable to maintain herself, and that the defendant, being in a position to contribute to her maintenance, had wilfully neglected to do so. The husband appealed to the Divorce Divisional Court on the ground, *inter alia*, that the magistrate was wrong in law in holding that the agreement not to claim maintenance was not binding on the wife. After argument by counsel for each side, the appeal was dismissed. The President, in his judgment, said that it was urged that there was no jurisdiction, that the agreement bound the magistrate and the Divisional Court, and that the wife had excluded herself from any possible benefit under these Acts. As to this point, the language of the statute supplies the test. The question before the magistrate was not whether this was an agreement which would be good at common law between independent parties and would exclude subsequent proceedings. LANGTON, J., said the appellant sets up a deed of separation between himself and his wife as a bar to the jurisdiction of the court. I do not think it is a bar. It is a matter of evidence whether such agreement does, in fact, provide reasonable maintenance. The magistrate has given the agreement its proper evidential value. In a previous case, *Diggins* v. *Diggins* (1926), 90 J.P. 208, the President said it was perhaps desirable that he should point out that it was not to be supposed that the wife had an unlimited right, under the amended statute, wherever she had entered into a deed of separation to proceed before the justices to have the terms of the deed reviewed. So far as this and other previous decisions of the Divorce Divisional Courts are inconsistent with the judgment in *Matthews* v. *Matthews*, they must be considered to be overruled. It can now be taken as settled that on an application for a maintenance order on the ground of wilful neglect to maintain, a separation agreement by which the wife agrees not to take those proceedings is not a bar to the jurisdiction of the justices. Although not a bar to the proceedings, the agreement is admissible in evidence on the questions what is reasonable maintenance and whether the husband has wilfully failed to provide it.

The question requires consideration whether another division of the High Court would not have arrived at a similar result in a different way. On an appeal from an order made by a court of summary jurisdiction under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1925, the Divorce Divisional Court is bound by the rules of the Supreme Court. By Ord. LIX, r. 7, the court to which any such appeal may be brought shall have power to give any judgment and make any order which ought to have been made. Therefore it follows that on the hearing of the appeal, the appeal court is exercising the powers of the court of summary jurisdiction, and not the powers of the Divorce Court which would be applicable to proceedings originating therein.

The Supreme Court of Judicature (Consolidation) Act, 1925, contains certain sections which require consideration for the

purposes of this argument. Section 44 provides: "Subject to the express provisions of any other Act, in questions relating to the custody and education of infants and generally in all matters not particularly mentioned in this Act, in which there were formerly or is any conflict or variance between the rules of equity and the rules of common law with reference to the same matter, the rules of equity shall prevail in all courts whatsoever in England so far as the matters in which those rules relate are cognisable by those courts." Section 36 provides: "Subject to the express provisions of any other Act, in every civil cause or matter commenced in the High Court law and equity shall be administered by the High Court and the Court of Appeal, as the case may be, according to the provisions of the seven sections of this Act next following. Among those seven sections is s. 41, which enacts: "No cause or proceeding at any time pending in the High Court or the Court of Appeal shall be restrained by prohibition or injunction but every matter of equity on which an injunction against the prosecution of any such cause or proceeding might formerly have been obtained, whether unconditionally or on any terms or conditions, may be relied on by way of defence thereto." One further section should be referred to, and that is s. 202 which enacts: "Every inferior court which has jurisdiction in equity or at law and in equity, and in admiralty respectively, shall, as regards all causes of action within its jurisdiction for the time being, grant in any proceeding before it such relief, redress or remedy, or combination of remedies, either absolute or conditional, and shall in every such proceeding give such and the like effect to every ground of defence or counter-claim, equitable or legal, as ought to be granted or given in the like case by the High Court and in as full and ample a manner.

In *Foster* v. *Reeves* [1892] 2 Q.B. 255, 57 J.P. 23, the effect of these sections was considered by the Court of Appeal. In that case the plaintiff and defendant had entered into an agreement not under seal for a lease for more than three years, which was therefore void under s. 3 of the Real Property Act, 1845. Where a defendant enters into possession under such an agreement, a court of equity regards that as done which ought to be done, and treats the tenant as if a valid lease were in existence. The appeal was from a decision of a county court, which had no equitable jurisdiction in this case because the value of the property let exceeded £500. The Court of Appeal held that the equitable doctrine above mentioned can only be recognised in a court which has equitable jurisdiction to grant specific performance in the particular case, and that this county court was in precisely the same condition as a common law court was before the passing of the Supreme Court of Judicature Act, 1873.

A court of summary jurisdiction not having jurisdiction in equity or in law and in equity, is not within s. 41, and therefore is also in the same position as a common law court was before 1873. If, on an application for a maintenance order on the ground of wilful neglect to maintain or persistent cruelty, the husband alleges that a covenant or an agreement by the wife not to take those proceedings is a bar to the jurisdiction of the justices, it should be pointed out to him that his remedy is to apply to the Chancery Division for an injunction restraining his wife from commencing or carrying those proceedings, and that the agreement is no bar to the jurisdiction of the justices.

To the argument that the wife by her agreement had excluded herself from any possible benefit under the Acts in question, this would probably be the answer of a common law court, whereas as has already been mentioned the answer of the Divorce Divisional Court was that the language of the statute supplies the test.

Mr. Leonard William North Hickley, solicitor, of Much Hadham, Herts, and King's Bench-walk, E.C., left £38,819, with net personalty £27,759.

Arbitration Clause in Friendly Society's Rules.

[CONTRIBUTED.]

IT is usual for the rules of a friendly society to provide for submission of domestic disputes to arbitration. Not infrequently it is provided that if a dispute occurs between a lodge and a member the dispute shall be submitted to a number of arbitrators who shall be members of other lodges, "none of whom shall be directly or indirectly beneficially interested in the case of dispute."

Suppose the dispute is as to whether the relatives of a deceased member are entitled to make a claim on the death endowment fund. This may be a central fund of the whole society made up by a levy upon the members of all the constituent lodges. In other words, ultimately, every member of every lodge is *interested* in the case of dispute. If the arbitrators allow the claim, the death endowment fund towards which they contribute by levy is, *pro tanto*, diminished. If, on the other hand, the claim is disallowed, there is so much the more available for other members or their relatives. Since, therefore, it may be contended that every member of every lodge is, in some fashion, interested in the result, can it be said that impartial arbitrators can be found, within the meaning of the qualification?

Let us examine the clause. Who is "*directly interested*" in the case of dispute? Clearly the wife, or sister, or whoever else would be entitled to the death claim. Who is "*indirectly interested*"? This would apply, e.g., to the sister's husband, if the sister were entitled to the claim. The object of the negative qualification is clearly to exclude near or other relatives. Now it may be plausibly contended that in the case proposed above, *any* arbitrator would be "*indirectly* interested" seeing that the result may involve an extra death contribution from him.

The principle was affirmed in *Dimes* v. *Proprietors of the Grand Junction Canal* (1852), 3 H.L.C. 759, that "no man is to be a judge in his own cause." And in *R.* v. *Rand* (1866), L.R., 1 Q.B. 230, BLACKBURN, J., said (at pp. 232, 233): "Any direct pecuniary interest, however small, in the subject of inquiry, does disqualify a person from acting as a judge in the matter . . . Wherever there is a real likelihood that the judge would, from kindred or any other cause, have a bias in favour of one of the parties, it would be very wrong in him to act . . . Circumstances from which a suspicion of favour may arise do not produce the same effect as a pecuniary interest." (See also *Committee on Ministers' Powers, Report* 1932, *Cmd.*, pp. 76–78.)

But can it possibly be contended that "beneficial interest" and "interest" mean the same thing? The term "beneficially interested" is a term of art and has acquired a technical meaning. We speak of a person "beneficially interested" in a will. He is "interested" to the extent of a positive "benefit" which he is to receive.

But is the arbitrator in the case proposed "*beneficially* interested"? If he allows the claim, he receives no benefit. If the claim is disallowed, can it correctly be said that because he is free from making a contribution to the death fund in this particular claim (which the award proves he was not bound to make) he receives a "benefit"? A positive benefit he does not receive. Nor can the relief from making a payment which one is under no duty to make be described as a "benefit." It is submitted that the arbitrator would not be "beneficially interested" unless he were a beneficiary of the death claim or otherwise closely concerned therewith, or with the beneficiary. The term must be given its legal meaning and cannot be so widely construed as to include every member of the society, and thus to be meaningless. *Res magis valeat quam pereat.*

Divorce Reform.

Our divorce laws are admittedly an easy target for the slings and arrows of the social reformer.

Quite apart from the controversial question whether divorce should be made easier or still harder, the leaven of public opinion recognises as obsolete absurdities a number of incidences of marriage and divorce law the preservation of each one of which has been taken under the protective wing of some class or organisation that has made the matter its own vested interest.

The best known of these is the disparity between the respective positions social and economic of men and women under our laws. Man does not begrudge woman her claim to social equality, provided she accepts the corollary of economic equality. Woman wants to have her cake economically and to eat it socially as well, and there's the rub. We should scoff at the proposition that a man should be entitled to put away his spouse by divorce and in the same breath demand that she should continue to maintain him, even after he has taken unto himself another. It sounds almost a Gilbertian injustice. Yet that is precisely what a woman can do under the present law and in cases innumerable successfully does to her husband.

Until the principles first enunciated in the Married Women's Property Acts have been developed on our statute book to their logical conclusions so that the rights of married women over their spouses are as much and as little as those of married men over theirs, it would seem that any modification of the divorce laws will be confined one-sidedly to the social aspect only of the problem, leaving the economic complement untouched.

"Mischiefs of the Marriage Law," by J. F. Worsley-Boden, M.A., D.Litt., is the work of an ardent reformer unusually free from that besetting sin of his kind, a bee in his bonnet. The book opens with a scholarly historical study of the institution of marriage. The Early Christian Fathers were astute psychologists and they saw to it that the Church made itself an indispensable functionary at the three key events of a man's life: birth, marriage and death. The Church ceremonies of baptism, marriage and burial supplied a hall-mark without which the events themselves had almost no valid existence, and thus the Church wove itself inextricably into the lives of the people. Irrevocability and infallibility were complementary doctrines that helped to cement the power of the Church, which felt that its strength lay in the executive rather than in the judicial. The indissolubility of Christian marriage and its doctrinal authority is traced by the author through its many phases and developments, and in his hands the theme takes on a new interest.

This historical survey is followed by a clear and succinct examination of the reliefs open to an injured spouse under the present law. The next part of the book is a moderate and well-informed criticism of the present state of affairs, and the author concludes with an enumeration of the reforms that he urges. Some of the new grounds for divorce he puts forward, such as unnatural offences, disease, etc., are almost beyond controversy.

Every solicitor with experience of the Divorce Court knows that the isolated act of adultery which constitutes the legal ground upon which the overwhelming majority of divorces are at present granted is scarcely ever, if not never, the real reason which brings about the wish of the petitioner for dissolution. That being the case, the adultery given in evidence is usually *ad hoc*, and to that extent it may be said that many undefended suits for dissolution are collusive. The bar of collusion indicates the irreconcilability in principle of our present law with the idea of dissolution by consent of the parties.

If divorce is easy it is contended by some that you diminish the solemnity of marriage, but Uncle Sam is by tradition a puritan monogamist and a polygamist by instinct, and he lives up to his traditions by gratifying his instincts successively instead of simultaneously. Even a wife for years sounds better that a mistress.

We are coming to realise that marriage, like many of our other cherished institutions, has got to pass modern tests of serviceability, but that as the alternatives to marriage are so hopelessly anti-social, it behoves us to refurbish it for the benefit of posterity.

The book is a valuable contribution to the literature of this extremely controversial social problem.

Company Law and Practice.

CXLIII.

ARRANGEMENTS BINDING ON CREDITORS.

I think I need make no apology to my readers for introducing to them the case of *Re Contal Radio Limited* [1932] 2 Ch. 66, for though it is a decision which is complete in itself, in the sense that a perusal of the judgment of Maugham, J., gives one a complete view of the situation, it is a case which decides a point of some general interest, and it construes a section originally found in the Companies Act, 1862, but which has not yet been construed by the courts. Maugham, J., however, has now had occasion to do so in one particular direction, and his judgment shows that there is a certain number of practical points which create difficulties in the way of the application of the section in question.

This section is s. 251, and it provides that any arrangement entered into between a company about to be, or in the course of being, wound up and its creditors shall, subject to the right of appeal under that section, be binding on the company if sanctioned by an extraordinary resolution, and on the creditors if acceded to by three-fourths in number and value of the creditors. The right of appeal above referred to is found in s. 251 (2), which gives every creditor or contributory the right, within three weeks from the completion of the arrangement, to appeal to the court against it. The court can thereupon, as it thinks just, amend, vary or confirm the arrangement. This section only applies to a voluntary winding-up, owing to the operation of s. 246, which says that the nine sections of the Act immediately following it are to apply to every voluntary winding-up, whether members' or creditors': this method of legislation is obviously convenient from the point of view of the draftsman, but it is something in the nature of a trap for the unwary—not so much, perhaps, for the unwary who study the Act as an Act, as for those who do so in one of the books which provide notes so copious on each section that the sections shortly before any section under consideration are likely to be many pages away. One expects to read the whole of any particular section to see whether it applies to the facts one has under consideration, but it seems a little hard on the busy man that he should have to look back for some eight or nine sections to find out whether the section applies.

The sections to which I have referred above being the ones immediately material for the purposes of the decision under consideration, we may turn to the facts, which can be dealt with quite briefly. In February, 1932, the company was insolvent, its liabilities (some of which were secured by debentures) exceeding its assets by a considerable margin: a meeting of creditors was held in that month, and a scheme was put forward providing for the payment of a composition of 5s. in the £ by instalments, and at a subsequent meeting of a committee of creditors it was decided to recommend the scheme to the general body of creditors. Assents to the extent indicated by s. 251 were given by the creditors, and a deed of arrangement was entered into; and there was no appeal to the court from the arrangement, as provided for by s. 251 (2). Subsequently, however, a creditor who had served

a statutory demand for payment on the company, and had not assented to the scheme, presented a petition for compulsory winding-up.

The petitioning creditor argued that the section did not apply because the company was neither about to be, nor in the course of being, wound up at the date of the completion of the arrangement. The further point was taken that, by reason of the provisions of s. 246, which stated that s. 251 was to apply "to every voluntary winding-up," s. 251 could not apply, because there was no voluntary winding-up. The defence which was presented by the company seems to amount to this: a creditor had, before the meeting of creditors at which the scheme was put forward, issued a writ against the company claiming the sum of £205 19s., the company was not in a position to defend that action, and the plaintiff could therefore have presented a winding-up petition, and either the company would have had to go into voluntary liquidation or submit to a compulsory order.

It must be admitted that, where the happening of a particular event is contemplated, it is impossible with absolute certainty to say that it is about to happen until—if the Irishism may be pardoned—it has happened, but it does seem to be going rather far to say that, because a particular person is in a position to present a petition, the company is "about to be wound up," and particularly so, when, as events turn out, the company is not in fact wound up. The petition might never be presented for a variety of reasons which it does not seem necessary to stop to consider here. At any rate, MAUGHAM, J., held that the section did not apply, and that the scheme was not binding on the creditors, for reasons to which I will refer a little later, but his lordship further decided that, as it was clear that a large majority of the creditors did not desire that the company should be wound up, an opportunity ought to be given for that desire to be given effect to by a scheme of arrangement under s. 153, and accordingly the petition was directed to be stood over for a consideration of a scheme under s. 153. When the petition came on for hearing after the adjournment it was stated that a summons had been taken out under s. 153 asking for an order summoning a meeting of creditors, whereupon the petition was further adjourned.

The first point raised by the learned judge was as to the meaning of the word "arrangement" used in s. 251, and he pointed out that in s. 153, and also in another section, s. 191 (1) (*e*), the word "arrangement" is used in conjunction with the word "compromise," a use which certainly seems to suggest that the wording of s. 251 cannot be said impliedly to include a compromise, as the legislature has shown that where it desires so to do, it actually inserts the word "compromise." Be that as it may, his lordship expressed no final conclusion on that point, but decided against the company's contention on the ground that the section only applies where there is a voluntary winding-up; so that where a company makes a composition with its creditors, the result of which is that the company is solvent, the company is not "about to be wound up" within the meaning of s. 251, and consequently s. 251 has no application. This decision seems to raise at least one curious point, and rob the section of a great deal of the utility which it might otherwise have had, because, while there may be occasions on which it is useful for a company in liquidation to be able to make arrangements with its creditors, it is much more useful for a company to be able to make arrangements which will dispense with the necessity of going into liquidation; and if no arrangement can be made binding under this section unless the company either is in, or goes into, liquidation, an application to the court must be necessary to keep the company on its feet, either to sanction a scheme under s. 153, or to stay the proceedings in the winding-up which must ensue to make a scheme binding under s. 251. It certainly seems to be a matter for the attention of the legislature—for some convenient and cheap method of binding a company's creditors without going to the court, if coupled with appropriate safeguards, would be a most desirable thing.

The legislature certainly ought to be able to consider this question, for it is obvious that the section needs entirely re-drafting: as is pointed out in the judgment in *Re Contal Radio*, there are several practical difficulties inherent in the section. It says nothing about the meetings of creditors, their summoning, or the voting thereat, and it seems that the votes of all creditors must be taken together, whether secured, unsecured or preferential, and it will be remembered that, as the company must go into liquidation, there will probably be preferential creditors. This method of voting might be very unfair, particularly to unsecured creditors; in addition, if the section be construed strictly, the court has no power to reject a scheme against which an appeal is made to it. As to the time for appealing, it is obvious that "the completion of the arrangement" may give rise to difficulties.

(*To be continued.*)

A Conveyancer's Diary.

Agricultural Charges—Meaning of "Enforceable."

A case of some importance arising upon the construction of the Agricultural Credits Act, 1898, is *Re Jones; ex parte National Provincial Bank* [1932] 1 Ch. 548 (76 SOL. J. 111).

It will be remembered that the Act (by s. 5) enables a farmer, as defined by the Act, to create in favour of a bank, as so defined, a charge (called an agricultural charge) on all or any of the farming stock and other agricultural assets belonging to him, as security for sums advanced, or to be advanced, to him or paid or to be paid on his behalf under any guarantee by the bank and interest, commission and charges thereon.

An agricultural charge may be either a fixed or a floating charge or both, and there are provisions with regard to the effect of a fixed and of a floating charge. A floating charge is to have the like effect as if the charge had been created by a duly registered debenture issued by a company, and there are provisions as to when such a charge shall become a fixed charge.

There are various supplementary provisions to which I need not refer here.

Then follows s. 12, which enacts as follows:—

> "Until the first day of January 1931 the foregoing provisions of this Part of this Act shall be subject to the following modification—
>
> > "Where a bank has before the passing of this Act made advances to a farmer, whether by means of an overdraft or otherwise, an agricultural charge created in favour of the bank shall be enforceable only in respect of moneys advanced in addition to and in excess of a sum equal to the amount of such advances outstanding at the passing of this Act."

The facts in *Re Jones* were that, in 1928, John Jones was a farmer within the meaning of the Agricultural Credits Acts. On 4th July, 1928, he applied to the National Provincial Bank for a loan. By an agreement in writing, dated 18th December, 1928, made by way of agricultural charge, John Jones ("the mortgagor") covenanted with the bank to pay to them on demand (*inter alia*) all sums of money owing or to become owing by the mortgagor on a current account and charged, by way of specific charge, certain farming stock set out in a schedule, and by way of floating charge, all other the farming stock and other agricultural assets as defined in the said Act, from time to time belonging to the mortgagor, with the payment to the bank of the moneys so owing. And by the agreement it was declared that the said floating charge should, as regarded the property subject thereto, become a fixed charge (in addition to the events mentioned in s. 7 of

the Act) if the bank required payment of the moneys owing upon the security, and the mortgagor failed to pay the same, and in that event the bank were empowered to give to the mortgagor notice in writing to that effect, and might seize and take possession of the property and exercise the power of sale conferred by the Act.

On 21st December, 1928, the charge was registered at the Land Registry, as provided by the Act.

On 3rd September, 1930, the bank gave notice in writing to the mortgagor demanding payment of the moneys then owing and that unless the amount was paid the bank would proceed to exercise the powers conferred by the charge.

On 27th October, 1930, a receiving order was made against the mortgagor and on 14th November, 1930, he was adjudicated a bankrupt.

On 1st January, 1931, the bank appointed an agent to take possession of the property comprised in the charge, and on 14th January, 1931, the agent sold after giving due notice.

The Agricultural Credits Act was passed on the 3rd August, 1928, and at that date there was owing to the bank the sum of £477 7s. 8d.

The amount realised by the sale was £1,151 17s. 7d.

The trustee in bankruptcy of the mortgagor claimed that s. 12 applied, and that therefore the bank could only deduct from the proceeds of sale of the property the difference between £477 7s. 8d., which was the sum due at the date of the passing of the Act, and £711 5s. 11d., namely £233 18s. 3d. The bank claimed to be entitled to deduct the whole sum due at the date of the sale.

The county court judge decided in favour of the trustee in bankruptcy.

On appeal to a Divisional Court (Clauson and Luxmore, JJ.), that decision was reversed.

The whole question turned upon the meaning of "enforceable" in s. 12 of the Act.

If by giving the notice on 3rd September, 1930, which had the effect of changing their floating charge into a fixed charge, the bank could be said to have enforced their security, then s. 12 would apply, and the bank could only retain the difference between the amount owing at the date of the passing of the Act and the amount ultimately owed. If, on the other hand, the notice was not an enforcement of the security, so that there was no enforcement until at the earliest, 1st January, 1931, when the agent was appointed, then s. 12 had ceased to operate, and the bank could retain the whole of the debt.

As I have said, the Divisional Court found for the bank on the ground that the notice in question was not an enforcement of the security.

Clauson, J., expressed the view that the notice was a step preliminary to enforcement, but not a step which enforced the security; it was a step taken with a view to subsequent enforcement.

His lordship said: "The notice had the effect of changing the security and making the security more advantageous to the mortgagee than it had been before. That does not seem to me to be an enforcement of the security. Suppose that the mortgagee was in a position to bring pressure to bear, by reason of his position as mortgagee, upon the mortgagor to give him additional security, it would be a misuse of language to call that an enforcement. In the same way, it seems to me that the doing of an act which may make his position stronger is not an enforcement of the security. The enforcement of the security took place in my judgment when an agreement for sale having been appointed, the agent sold. It is possible the enforcement of the security began when he took possession with a view to sale. It is not necessary to answer that for the purpose of this case. The agent did not take possession or sell until after 1st January, when the modifications embodied in s. 12 were no longer applicable as between the parties."

I think that this case has points of considerable interest.

Settlements on Infant Children — Income Tax.

A recent decision of the Court of Appeal not yet reported, but a short statement of which appeared in the news columns of *The Times* for 27th July, which is of much interest upon the subject of settlements upon children with a view to avoid income tax, is *Trustees of Watson* v. *Wiggins* (*Inspector of Taxes*).

The case turned upon the construction of s. 20 (1) of the Finance Act, 1922, which, so far as material enacts that "Any income—

(*a*) of which any person is able, or has at any time since the 5th day of April, 1922, been able without the consent of any other person by means of the exercise of any power of appointment, power of revocation or otherwise howsoever by virtue or in consequence of a disposition made directly or indirectly by himself to obtain for himself the beneficial enjoyment; or (omitting (*b*)),

(*c*) which by virtue or in consequence of any disposition made directly or indirectly by any person after the 5th day of April, 1914, is payable to or applicable for the benefit of a child of that person for some period less than the life of the child,"

shall so long as the child is an infant and unmarried be deemed, for income tax purposes, to be the income of the person able to obtain the beneficial enjoyment or of the person by whom the disposition was made. There are provisoes, the effect of which are that when the "consent of any other person" to the exercise of a power of revocation is that of the wife or husband of the settlor the power shall be deemed to be exercisable without the consent of another person.

It is also provided that para. (*c*) shall not apply as regards any income (*inter alia*) "which is payable to or applicable for the benefit of a child during the whole period of the life of the person by whom the disposition was made."

As stated in *The Times*, the facts appear to have been that a father settled upon an infant child an annuity, payable during the joint lives of the father and child, and it is said that the father reserved a power of revocation to himself.

It must, I think, be assumed that the power of revocation was exercisable with the consent of some person other than the wife of the settlor. If the settlement was in accordance with the usual practice, the consent of the trustees would be required. If that were not so the objection of the Inland Revenue would have been based upon para. (*a*) set out above, whilst the case, in fact, turned upon the construction of para. (*c*).

It was contended for the Crown that the annuity being for the joint lives of the settlor and the infant was for a period "less than the life of the child," there being a power of revocation which, if exercised, might put an end to the annuity during that period.

The case arose in the first place on an appeal to the Commissioners by the trustees of the settlement. The settlor, on paying the annuity, had deducted income tax which the trustees sought to recover on behalf of the infant. The inspector of taxes objected to the claim on the ground that the income must be deemed the income of the settlor, because it was payable for some period less than the life of the infant.

The trustees appealed to the Commissioners, who upheld the objection.

Rowlatt, J., reversed the decision of the Commissioners, and the Court of Appeal dismissed an appeal against that decision.

The ground of the decision of Rowlatt, J., and of the Court of Appeal was, doubtless, that the power of revocation might never be exercised and until it was the settlement was not in any way affected by it.

A full report of this case will be looked for with interest, as there must be many cases of settlements in the same form which is, indeed, a very common one.

Landlord and Tenant Notebook.

Changing the Nature of the Thing Demised. II. Modern Decisions.

Modern decisions on this subject may be said to commence with *Doherty* v. *Allman* (1878), 3 A.C. 709, in which the alteration complained of was the conversion of store-houses into dwelling-houses. The tenants held a 999-year lease, and this must be taken into consideration when examining the judgments. The House of Lords was emphatic in ruling that if, as appeared, the value of the reversion was increased by the alteration, the waste would be ameliorative and no injunction would issue, while if damages were to be claimed (they were not actually claimed) the award must be a nominal one.

The lead so given was followed in *Meux* v. *Cobley* [1892] 2 Ch. 253, the facts of which were that the tenant of a farm near London had converted part of the holding into a market-garden, building glass-houses and other buildings upon it, which would make the concern more profitable, having regard to the growth of the metropolis. Kekewich, J., said there was "technical" waste, but it did not follow, in view of *Doherty* v. *Allman*, that damages would be awarded or an injunction issued. It is, perhaps, important to note one observation in the judgment, namely, that the farm was not less a farm because of the conversion. If this be a finding of fact, the judgment is more easily reconciled with some later decisions.

A very complete survey of the question was undertaken by Buckley, J., in *West Ham Central Charity Board* v. *East London Waterworks Co.* [1900] 1 Ch. 624. The subject-matter of the demise was waste land. The term was ninety-nine years, and there was a sub-demise of most of it. It was common ground that the use to which the land would probably be put when the lease expired was for building purposes. The sub-tenant was using it as a rubbish-shoot, and claimed that this, by raising the level, actually enhanced the value if it were offered as a factory site. The learned judge did not actually decide this problem, but taking the law from *Darcy* v. *Aswith* (1618), Hob. 234, said that the alteration of the nature of the thing demised was in itself waste. He agreed that it must be a question of degree—if the defendants were to raise the level by applying top-dressings there would be no offence. With due deference, it looks as if this judgment ignored the reasoning following the definition in *Darcy* v. *Aswith*, namely, that changing the nature, etc., was waste because it prejudiced the inheritance and that the injury to the inheritance consisted in destruction of evidence of title, which, according to Lord Blackburn in *Doherty* v. *Allman*, would be theoretically absurd nowadays.

Then came *Hyman* v. *Rose* [1912] A.C. 623. The subject-matter of the lease was a chapel, built as such, and built under the provisions of the head lease, which was granted in 1842 for a term of ninety-nine years. Sub-lessees had converted it into a cinema, effecting some fairly substantial structural alterations in order to carry out their purpose. Staircases were removed and replaced, a new door made, etc. But Lord Loreburn, L.C., who delivered the judgment of the House, said it was a question of fact whether such an act changed the nature of the thing demised, and regard must be had to the user of the demised premises permitted under the lease. This is significant as being the first pronouncement to the effect that the covenants were to be taken into consideration in deciding whether waste had been committed. They have, of course, often affected the question whether it was excusable. If their lordships had taken the same line as did Kekewich, J., in *Meux* v. *Cobley*, they might have ruled that a building was no less a building because it was converted.

It would, indeed, be difficult fully to reconcile even the modern decisions on the question whether alteration of the nature of the thing demised is waste—by which I mean actionable waste, for to say that there is "technical" waste but no right to an injunction or damages is hardly helpful: *ubi remedium*, *ibi jus*, and *ubi jus*, *ibi remedium*. The comprehensive suggestion that a landlord may exercise his judgment and caprice, made by Lord Romilly in *Smyth* v. *Carter*, referred to last week, was treated as an *obiter dictum* by Lord O'Hagan in *Doherty* v. *Allman*. But if before passing to the most recent case of all, in which a new line was taken, I may suggest that there is a principle running through the cases referred to above and referred to last week, it is this: the alteration of premises by a tenant is actionable as waste, though the value of the reversion be not prejudiced, if the alteration consists in the substitution of one kind of property for another, and not merely in the removal of worthless matter or the addition of valuable matter; and in considering whether the difference is a difference in kind, the length of the term is to be taken into account in that the longer the term, the more disposed is the law to consider an alteration to be an alteration in the same kind.

And this proposition may be said to have been applied in *Marsden* v. *Edward Heyes, Ltd.* [1927] 2 K.B. 1, C.A., in which two of the judges held that the facts showed actionable waste, but in which the tenant was actually found liable for breach of a different kind of obligation, and a contractual one, namely, the implied covenant to keep in tenantable repair and to deliver up in tenantable repair. The tenant must, said Bankes, L.J., deliver up premises of the *same character*. The facts were that the defendant's predecessor had converted the premises, a shop and dwelling-house, into a shop and store-room, removing internal walls, fireplaces, etc., in the process. The tenancy was only a yearly one, and granted verbally. Hence the two covenants referred to were implied. Their importance came to the fore because it was argued that the claim for waste, being in tort, was time-barred; but the wonder is that no one thought of them when the older cases were argued!

Our County Court Letter.

THE CONSTITUENTS OF FRAUDULENT PREFERENCE.

The validity of a mortgage of book debts was considered in the recent case of *In re Smith; Lacon* v. *Cox*, at Wolverhampton County Court, on an application by the trustee in bankruptcy for a declaration that three instruments were fraudulent and void. The first was dated the 26th March, 1931, and charged specified debts (together with other property), wherefore the applicant contended that the deed was void for non-registration under the Bills of Sale Act, 1878. The respondent's case was that, as he relied on the charge of specified debts, there was no liability to register, by reason of the Bankruptcy Act, 1914, s. 43 (1), and the only consequence of non-registration was that the charge was void against the trustee in respect of the other property. The same considerations applied to the second charge (dated the 1st August, 1931), but on the giving of the further charge (dated the 11th December, 1931) the debtor gave notice thereof to the persons who owed him the various debts. No evidence was called, but it was agreed that the bankrupt had charged book debts amounting to £500 as security for loans from the respondent totalling £350. His Honour Judge Tebbs observed that there was no moral fraud, and it was held that the claim failed as regards the first two deeds. The debtor must have known, however, that he was parting with a substantial part of his assets by giving the third charge, and his intention evidently was to prefer the respondent. The last instrument was therefore void as a fraudulent preference, and the matter was referred to the registrar to ascertain the amount collected by the respondent thereunder, the costs being reserved pending

the registrar's report. For prior references under the above title, see the County Court Letter in our issue of the 9th July, 1932 (76 Sol. J. 489).

LIABILITY FOR FAILURE OF EXPERIMENTAL CROP.

The respective positions of the farmer and the seed merchants were considered in the recent case of *Perkins* v. *J. P. Harvey and Co. Limited*, at Hereford County Court, in which the claim was for £60 as damages for breach of contract. The plaintiff's case was that (*a*) by a verbal agreement (made at the Farmers Club, in May, 1930) he had agreed to cultivate five acres of "Rainbow Red" clover, which the defendants wished to introduce from Poland, (*b*) the seed (80 lbs.) was supplied free, on the terms that the defendants should buy the crop (at 1s. 3d. a lb.) when harvested, or (if the experiment was a ailure) should compensate the plaintiff for the use of his land, (*c*) by June, 1931, it was evident that the crop was a failure, and, in September, the plaintiff pointed out that he might have grown barley instead, and he therefore claimed £12 per acre. Corroborative evidence of the agreement was given by three witnesses, and a fourth stated that he had also been unsuccessful with the same seed. The defence was a denial of any agreement to compensate in the event of failure, and it was also pointed out that (1) a wet season (such as 1931) was detrimental to clover, but the plaintiff had a good crop in flower (ready for cutting) in June and had not complained until September, (2) the same seed had grown good crops in Essex, and so was not defective. Corroborative evidence as to the bad year was given by a seed merchant and a seed and grain broker, both from London, and the following questions were left to the jury: (1) Was the crop a failure? (2) If so, was there any agreement for compensation? (3) If so, did this cover failure from any cause whatever? (4) If not, was the cause of failure included in the agreement? (5) What damages, if any, were due? The jury answered the first question in the negative, and, as the others did not arise, His Honour Judge Roope Reeve, K.C., gave judgment for the defendants, with costs.

Books Received.

Complete Practical Income Tax. By A. G. McBain, Chartered Accountant. Sixth Edition. 1932. Demy 8vo. pp. xii and (with Index) 295. London: Gee & Co. (Publishers) Limited. 7s. 6d. net.

The Examination of Balance Sheets and the Information they should Convey to Shareholders and Bankers. By Allan Welch, F.C.A. 1932. London: Gee & Co. (Publishers) Limited. 6d. net.

Tax Cases. Vol. XVI, Parts IV and V. Reported under the direction of the Board of Inland Revenue. 1932. Royal 8vo. pp. 213–292 and 293–380. London: His Majesty's Stationery Office. Per Part, 1s. net. Postage extra.

Tin and Tin Shares. By C. R. Stiles, F.S.S., F.R.G.S. August, 1932. Demy 8vo. pp. 16. London: Fredc. C. Mathieson & Sons. 1s. net.

Oregon Law Review. Vol. XI. No. 4. June, 1932. Eugene, Oregon: University of Oregon. Subscription $3.00 per annum. Single Copy, 75 cents.

The Bombay Law Journal. Vol. X, No. 2. July, 1932. Bombay: Union Press. Annual subscription, Rs.10 for India, Rs.13 Foreign. Single copy, Rs.2-0-0.

The Australian Law Journal. Vol. 6, No. 1. May, 1932. Sydney, Melbourne and Brisbane: The Law Book Company of Australasia, Limited. Annual subscription, £2 2s.

[All books acknowledged or reviewed can be obtained through The Solicitors' Law Stationery Society, Limited, London and Liverpool.]

In Lighter Vein.

The Week's Anniversary.

Richard Wallop is best remembered for the antipathy which he aroused in Lord Chief Justice Jeffreys who never missed an opportunity of showering insults upon him. He was constantly engaged in State trials under Charles II and James II, generally against the Crown and, in this connexion, the Chief Justice said to him: "Mr. Wallop, I observe you are in all these dirty cases and were it not for you gentlemen of the long robe who should have more wit and honesty than to support and hold up these factious knaves by the chin, we should not be at the pass we are at." His manner too seems to have got thoroughly on the nerves of Jeffreys who once exclaimed: "Pray behave yourself as you ought, Mr. Wallop. You must not think to huff and swagger here." On another occasion, in answer to a submission from the unfortunate counsel, he cried: "Sometimes you humbly conceive and sometimes you are very positive!" The judge, noticing him in court at the trial of Thomas Rosewell, asked his business and on his replying that he came out of curiosity to listen to the case, refused to proceed as long as he remained. Subsequently, however, Wallop was briefed to move in arrest of judgment and succeeded. He died on the 22nd August, 1697, about eighteen months after he was promoted to be Cursitor Baron of the Exchequer.

Dogs at Service.

There has recently been correspondence in *The Times* on the subject of "Dogs in Church." Perhaps the most religious dog on record was the memorable "Dolphin" a Newfoundland which belonged to Lord Hermand, the Scottish judge. His master, who took him to church regularly, had taught him to sit up with his paws on the book board of the pew and his head resting on them. Even when the judge did not go to service this devout animal attended alone with every appearance of spiritual relish. He was, however, no bigot and when the parish church was closed he would attend dissenters' meeting-houses with an equal display of piety. "Jack," the celebrated terrier of Mr. Justice Hawkins only just missed attending Hereford Cathedral in state during the Assizes. All were ready to start, the dog in his own set of miniature robes, when the chaplain asked very sententiously: "My lord, are you really going to take the little dog to divine service in the cathedral?" The judge put on an astonished look and then, pretending to consult his pet, replied: "No. Jack says not to-day. He doesn't like long sermons." The Assize sermon that day was one of the shortest ever preached.

"Big Ben" Surpassed.

The new mammoth clock which crowns Shell Mex House is just a little larger than "Big Ben." Its appearance makes it interesting to recall that the giant timepiece of the Palace of Westminster was made "from the design of Edmund Beckett Denison, Q.C.," as the inscription on the frame of the movement testifies. That aggressive and eruptive genius may be better remembered under the name of Lord Grimthorpe, lawyer, mechanician, controversialist, clock-designer, architect, president of the Protestant Churchman's Alliance—in the words of Balfour Browne, K.C., "whatever his hand found to do he did it with all his might and often botched the performance." As a friend of Mr. Dent, the clockmaker who constructed Big Ben to his design, he rather unwisely assisted that gentleman in the preparation of a will which was eventually disputed, found wanting and set aside by the court. Shortly after this failure, he was cross-examining a distinguished engineering expert, Mr. Thomas Hawksley, and, with a sneer at his assumed omniscience, asked: "Is there anything you don't know about, Mr. Hawksley?" "Yes, Sir Edmund Beckett," was the retort, "I don't know anything about clocks or wills." Lord Grimthorpe's own will dealing with his personal estate of a million and a half was so complicated that it gave rise to much litigation.

POINTS IN PRACTICE.

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, is responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Solicitor—Executor—Power to charge Fees, etc.—Right to Act.

Q. 2540. By her will a testatrix appointed A, B and C as her executors, the will being drawn up by B, a solicitor, and included a power for his firm to charge. C having predeceased the testatrix, she executed a codicil, also prepared by B, appointing D an executor. The testatrix having died, all the executors attended the funeral, went through the papers, and B took the papers and deeds away. As a result of information received A and D instructed another firm of solicitors to advise whether the will was valid. Proofs of evidence were obtained, including one from B, and the papers laid before counsel, who advised that the will was proper and should be carried out. A and D do not trust B. B does not trust A. A and D have retained solicitors, Messrs. X & X, to prove the will, and wind up the estate, and have written letters to B's firm requesting them to hand over all papers to X & X. This B's firm declined to do, as they think B is entitled to act. The residuary beneficiary has no objection to the estate being wound up by B's firm. The question is whether B's firm are entitled to act or whether A, the first-named executor, and D, the executor named in the codicil, can say that the estate shall be wound up by a firm other than that of which B is a member. Is there any authority?

A. We have not been able to trace any direct authority on this point. In view of the decision in *Foster* v. *Elsley*, 51 L.J. Ch. 275, where it was held that a direction in a will appointing a particular person solicitor to the trust estate imposes no trust or duty on the trustees of the will to continue such person in the management and affairs of the estate, it would be safe to infer that a mere power to charge does not entitle B or his firm to act. He may, presumably, be separately represented, and by his own firm, but if that is done it seems that the costs of all practitioners acting for the executors must amount, in so far as they can be charged against the estate, to but one set of charges, and that they must be shared amongst the solicitors doing the work (Law Practice, etc., in "The Solicitors' Profession," edit. of 1923: Opinion of the Council of The Law Society of 11th November, 1895, p. 283, No. 1066). This would not apparently affect the right of B to charge for non-professional work, if he has it, unless those charges were increased by the separate representation.

Sale and Purchase of an Undivided Share in Freeholds—Contract—Necessity for Writing.

Q. 2541. Do you consider that it is necessary for a contract for the sale and purchase of an undivided share in freeholds to be in writing in order to be enforceable, or have the transitional provisions of the Law of Property Act, 1925, rendered writing unnecessary in such a case?

A. We express the opinion that writing is not necessary for the formation of a binding contract for the sale and purchase of an undivided share in freeholds. Such an undivided share is not an "interest in land" or "land" within s. 40 of L.P.A., 1925 (replacing s. 4 of the Statute of Frauds as relating to contracts for the sale of land), as the definition of "land" contained in s. 205 (ix) of L.P.A., 1925, expressly states that "land" does not include an undivided share in land.

Probate—Right to Acknowledgment of.

Q. 2542. A died in 1914, having by his will given all his property to his trustees upon trust for sale, with power to partition. He appointed B and C executors and trustees of his will. In 1916 a partition was made of certain property, to one-half of which A was entitled, and the entirety of the property now dealt with was vested in B and C upon the trusts of the will. Since that date B and C have dealt with the property as "trustees." A portion of the property has just been sold subject to the General Conditions of 1925 (2nd ed., 1928) of The Law Society. The purchaser claims that the probate should be inserted in the acknowledgment. The vendors contend that the only reason why a probate is now included in an acknowledgment is that there may be endorsements of dealings by the personal representatives, but that as there was an implied assent by the personal representatives to themselves as trustees some fifteen years ago and they are selling as trustees, the purchaser is not concerned.

A. The object in modern times of having an acknowledgment of a probate is because the official record gives no clue as to the memoranda (of assents, etc.) endorsed thereon (if any) under A. of E.A., 1925, s. 36 (5), of which a purchaser has constructive notice: sub-s. (6). Where, as in this case, the possibility of a post-1925 assent is absent this object is gone. In the 2nd ed. of the General Conditions of 1925, cl. 34 (5), the words "granted before 1925," which appeared in the former edition, have been omitted. It would appear, therefore, that the purchaser is entitled to the acknowledgment, though of no special use to him, for it is not for the vendor to assert the possibility or impossibility of any particular thing.

Infant—Mortgage to.

Q. 2543. A widow was recently awarded the sum of £250 compensation under the Workmen's Compensation Act in respect of the death of her husband arising out of and in the course of his employment. The judge has ordered that the widow is entitled to £225 of this money, and that the younger child of the deceased, who is at present aged seventeen, is entitled to £25. The widow was desirous of devoting the compensation, £250, in reduction of the mortgage on her house, whereupon the judge ordered that this be done and that the widow then execute a charge in favour of her daughter on the security of the equity of redemption in the house for £25. Will you kindly let us know—

(1) Whether such a mortgage is practicable in the case of an infant, and, if so, where we may find a suitable precedent for the same?

(2) How will the mortgage be discharged in the event of the widow desiring to sell the property before her daughter attains twenty-one?

(3) Can a more practicable way of achieving the object of the judge be brought into effect, e.g., a charge in favour of the registrar of the court as a trustee for the daughter, or some similar method?

A. (1) As an infant cannot hold a legal estate in land (L.P.A., s. 1 (6)), it follows that she cannot be a legal mortgagee. A grant of a legal mortgage of land to an infant operates only as an agreement for valuable consideration to execute a proper conveyance when the infant attains full age, and in the meantime to hold any beneficial interest in the

mortgage debt in trust for the persons for whose benefit the conveyance was intended to be made: L.P.A., 1925, s. 19 (6). There seems no reason why an infant cannot be an equitable mortgagee, but the position would be generally unsatisfactory.

(2) *Cadit quæstio.*

(3) We think the suggestion that the equity of redemption be charged to the registrar as trustee for the daughter is excellent.

Intestacy of Statutory Tenant.

Q. 2544. A is the tenant of a controlled house. On A's death intestate his widow becomes tenant. The widow dies intestate, leaving several sons and daughters in the house. The landlord agrees to accept one of these sons as tenant, and accepts rent. Does the property remain subject to the provisions of the Rent Acts, or does the property become decontrolled on the death of the widow, on the ground that the statutory tenancy is not assignable, and only passes once on intestacy to the widow? The word "tenant" in the Act is defined in s. 12 (1) (*g*) as including the widow of a tenant dying intestate. Please give the relevant sections of the Act which are applicable.

A. The property became decontrolled on the death of the widow, as the statutory tenancy is not assignable. It is not strictly accurate to describe the statutory tenancy as having passed once on intestacy, viz., to the widow. As pointed out by Mr. Justice Swift, in *Pain* v. *Cobb* (1931), 47 T.L.R., at p. 597 "she was included in the word 'tenant,' and could not be evicted, but she was not in fact the tenant of the house." The learned judge further pointed out that the legislature never intended to create a personal right which should go on in perpetuity (among members of the former tenant's family) but merely intended that the widow living in the house should not be dispossessed at once. The relevant section of the Act is s. 12 (1) (*g*) as construed in the above case.

Road Traffic Act, 1930—Motor Accident in Garage Yard.

Q. 2545. Section 35 of the above Act which requires insurance against third-party risks, says that such insurance must be against the user "on a road." Section 36 (1) contains three provisos excepting three kinds of risks from the insurance required by s. 35 (1). Would a policy of insurance which simply covered the statutory risks which must be covered under the Road Traffic Act, 1930, cover an accident which occurs in a garage yard to which the public are invitees. In other words would the garage yard be held to be a road within the meaning of the above Act in the same way as a train is held to be a "public place" so far as "gambling" is concerned. We realise that the policy might provide for all third-party claims, but we have to assume it only covers risks in respect of which insurance is compulsory under the Act and we are in doubt as to whether an accident in a garage yard is a risk against which compulsory insurance is necessary, in view of the facti t is not a road. The facts are that a notice is placed near the entrance to a garage that a flat is to let. Two people cross the footpath on the highway into the garage yard where they are when a motor car belonging to the garage proprietor and driven by his servant backs into the garage yard and knocks the two pedestrians over, causing them damage. The two pedestrians are invitees and it may be said there is a general invitation to any of the public who may propose taking the flat advertised to enter the garage yard. If the garage proprietor has merely a compulsory insurance against the risks it is stipulated insurance must be effected against as mentioned in the Act it would appear a garage proprietor has no claim under his policy unless the garage yard can be held to be a "road" under s. 35 (1). Have there been any decided cases as to what is a "road" under the above Act?

A. The word "road" as used in s. 35 (1) of the Road Traffic Act, 1930, is defined in s. 121 (1) as "any highway and any other road to which the public had access." A place to which "the public have access" is therefore not within s. 35 (1), unless that place is also a road, and the latter section is not so wide in its scope as, for example, s. 15 (1). This provides for the punishment of persons driving motor vehicles when under the influence of drink or drugs—an offence which may be committed on a road "or other public place." The maxim "*inclusio unius exclusio alterius*" therefore seems to apply, as (*a*) the distinction between the two sections is very marked, (*b*) if the legislature had intended s. 35 (1) to extend to any public place, the appropriate words would have been inserted, as in s. 15 (1). The test of the application of s. 35 (1) is not whether the road is a highway, as a private road would be within its operation, but it would be straining the effect of s. 35 (1) to say that the yard is a private road to the garage. An accident which happens on private ground, and in enclosed premises (such as a yard) is, therefore, not within the purview of s. 35 (1), and a garage proprietor has no claim under his policy, if the latter merely covers the statutory third-party risks. The latter would cover an accident on a drive, leading from the gates to the front door of an old mansion converted into a hotel, and some fine distinctions can evidently be drawn under the section, but no cases have yet been reported as to what is a "road" under the above Act.

Contractor for District Council Negligently Filling in Trench.

Q. 2546. The A. Urban District Council in August, 1930, entered into a contract with B. & Co. for the laying of a sewer. This necessitated the excavation in a public road of a deep trench which ran under the service pipes from the water main to the various houses on one side of the road. The trench was later filled in, and the work completed in January, 1931. In May, 1931, C, who owns a house fronting the road, discovered that the service pipe leading from the water main to his house was leaking. The water company repaired this at his cost and stated that the pipe was leaking owing to the faulty manner in which the trench had been re-filled. They said that the filling had subsided and taken a section of the pipe down with it. It is assumed that proceedings against the Council are barred by the Public Authorities Protection Act, 1893, but can B. & Co. be sued for the cost of repairs? What evidence would be required, and would evidence that other pipes in the same road have been similarly affected be admissible? Would the onus be on the plaintiff to prove negligence?

A. Any action against the council is barred by the Act, but not one against the contractors (*Tilling* v. *Dick Kerr & Co.* [1905] 1 K.B. 562). It would certainly be necessary to establish that the contractors had been guilty of negligence, but the evidence of the water company's officials would establish a *prima facie* case, and no objection could be taken to evidence of similar defects in other parts of the *same work*. A word of warning must be given however. It does not appear to be clear that C was liable to repair the pipe in the road itself. The company's special Act must be consulted. Section 53 of the Waterworks Clauses Act, 1847, gives the owner and occupier a right when he has laid the communication pipe to receive a sufficient supply of water for domestic purposes, and in *Chapman* v. *Fylde Waterworks Co.* [1894] 2 Q.B. 599, it was decided that he had no right under s. 52 to break up pavements, etc., for repairing. The question whether he was liable to repair was not definitely decided, but it was held that *qua* the public the water company was liable. The special Act may contain provisions dealing with this point.

Notes of Cases.

High Court—Chancery Division.

Attorney-General *v.* Corke.

Bennett, J. 25th, 26th, 27th, 28th and 29th July.

LAND—LICENSED TO CARAVAN DWELLERS—ABNORMAL USE—DUTY OF OWNER—NUISANCE—*Rylands* v. *Fletcher* APPLIED.

The defendant owned a piece of land within the Bromley Rural District in a neighbourhood where there were many small houses and a considerable population. He licensed it at a weekly rent to gypsies and others. On several occasions notices in respect of nuisances had been served on him under s. 94 of the Public Health Act, 1875. By 1932 there were fifty-two caravans, six sheds and two tents on the land. The conduct of many of the persons occupying them was extremely offensive and interfered with the ordinary comfort of dwellers in the vicinity. They neglected to use water-closets provided on the property and deposited filth on adjoining land; they made a noise at night, especially on Saturdays, returning from public-houses. They and their horses, which they did not adequately control, damaged neighbouring property.

BENNETT, J., in giving judgment, said that the question was whether the defendant could be held responsible for acts done off his property by persons living on it, as were all the acts proved to interfere with the comfort of the neighbours. Bringing people to live on the land in caravans was an abnormal use to put it to. The defendant was under a duty to see that they did nothing injurious to the health or comfort of neighbours. He was liable on the principle underlying *Rylands* v. *Fletcher*, L.R. 3 H.L. 330. Some of the occupants of the land were respectable people, but the defendant had also attracted to his land persons whose habits did not conform to ordinary standards. There would be a declaration that the defendant was under a duty to prevent persons licensed by him to occupy the land from depositing filth in the vicinity, breaking fences, allowing their horses to trespass and creating disturbances in the vicinity and an injunction would be granted accordingly.

COUNSEL: *Vaisey*, K.C., and *C. R. R. Romer*; *Galbraith*, K.C., and *Cyril J. Parton*.

SOLICITORS: *May, Sykes & Co.*; *Farrar, Porter & Co.*, for *Chancellor & Ridley*, of Dartford.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Probate, Divorce and Admiralty Division.

Beaumont *v.* Beaumont.

Bateson J. 22nd April.

Lord Merrivale, P. 6th June.

DIVORCE—PRACTICE—COSTS—ABATEMENT OF SUIT—WIFE'S PETITION FOR JUDICIAL SEPARATION—HUSBAND'S ANSWER CONTAINING DENIAL—COUNTER-ALLEGATIONS AND PRAYER FOR LIKE RELIEF—ORDER FOR SECURITY FOR WIFE'S COSTS—SUM PAID INTO COURT—DEATH OF HUSBAND BEFORE HEARING—REGISTRAR'S ORDER FOR TAXATION AND PAYMENT OUT—APPEAL—ORDER *Ultra Vires*—R.S.C. ORD. LXV, R. 1, ORD. LIV, R. 12—MATRIMONIAL CAUSES RULES, 1924, r. 97.

This matter first came before Bateson, J., in April, 1932, upon summons, appealing against an order of the registrar for taxation and payment out to the wife petitioner's solicitors of a sum of £200 in court, the suit having abated by reason of the death of the respondent husband pending suit. In October, 1930, the wife petitioned for judicial separation on the ground of cruelty. The husband filed an answer in which he denied the allegations, made counter-allegations of cruelty and himself asked for a judicial separation. In July, 1931, the husband was ordered to pay £43 costs up to setting down and to give security for £200 for the costs of the hearing. By October, 1931, £200 had been paid into court by the husband in respect of this obligation. In November, 1931, the husband was ordered to pay £153, costs of alimony proceedings and of a motion to attach him, and was further ordered to give security for an additional sum of £320. Subsequently execution was levied upon him in respect of the sum of £153 and £70 was realised, leaving £83 outstanding. In January, 1932, the husband died, the case not having been heard. In February the registrar made the following order upon a summons asking for an order of taxation of costs served on the husband's executor: "Upon hearing the solicitors for the petitioner and respondent I do order that the petitioner be at liberty to file a bill of costs herein for taxation." On application to tax, the taxing registrar refused to do so on the ground that there was no order for costs. In March the order was varied as follows: "Upon hearing the solicitors for the petitioner and the personal representative of respondent I do order that the order herein made on February 26th, 1932, be varied and that the petitioner be at liberty to tax her costs herein, and that after taxation the sum of £200 now lodged in court be paid out to the petitioner's solicitors, on their undertaking in the event of the said costs being taxed at an amount less than the said £200 to pay the balance thereof forthwith to the solicitors for the personal representative of the respondent, and I do further order that the personal representative of the respondent be at liberty to attend the said taxation." Counsel for the respondent's executor on appeal to the judge submitted that the order was *ultra vires*. The suit had abated and the court had no power to make an order for costs extending beyond the life of the suit. There was only jurisdiction to make an order for payment of the balance of the sum already ordered. The respondent's executor could not be made a party to an abated suit. Counsel referred to *Brown* v. *Feeney* [1906] 1 K.B. 563, C.A. *Brydges* v. *Brydges and Wood* [1909] P. 187, C.A.; *Coleman* v. *Coleman and Simpson* [1920] P. 71; *Cunningham* v. *Cunningham* (1897), 77 L.T. 405; *Maconochie* v. *Maconochie* [1916] P. 325. Counsel for the petitioner, submitted that before the court could deal with a fund in court it must tax. By virtue of the Rules of the Supreme Court, if the Matrimonial Causes Rules did not specifically confer jurisdiction, a registrar had the same power as a judge in chambers to award costs. Counsel for the executor in reply submitted that a judge would have no jurisdiction to make such an order. Only the trial judge could make an order for the costs of the trial.

BATESON, J., after reviewing the authorities, said that the present application was in a suit which had abated, and in view of the cases in the Court of Appeal could not be granted. Counsel for the petitioner had submitted that if the Divorce Rules did not help him, r. 97 threw the court back on the Rules of the Supreme Court, and Ord. LXV, r. 1, coupled with Ord. LIV, r. 12, supported by *Brown* v. *Feeney* (*supra*) showed that the registrar could make the order in the present case. But Ord. LXV, r. 1, said that the costs "are in the discretion of the court or judge." He (his lordship) took that to mean the court or judge who heard the case, whatever the case might be. Order LIV, r. 12, gave the registrar power to do anything that the judge might do in chambers, but he (his lordship) did not think that the judge in chambers in the present case could do anything in regard to an order for costs or an order for taxation. The appeal must be allowed with costs here and below. (His lordship gave leave to appeal intimating that he would have been willing to make an order for payment out to the petitioner's solicitors of £78 costs due under an order in the suit, and of the balance to the respondent-executor.) The matter came before the President on 6th June, 1932, being raised by the petitioner in the form of a motion asking for an order that the sum of £200 be paid out to her or to her solicitors or in the alternative for directions as to ascertaining her or her solicitor's right to the sum. Counsel for the petitioner relied, *inter alia*, upon the authority of *Maxwell*

v. *Wolseley* (*Viscount*), 107 1 K.B. 274. Counsel for the respondent's executor submitted that the matter was *res judicata*. Further the court had no material on which to decide the issue of costs of the trial and the respondent, who would have been a vital witness in that regard, was dead.

Lord MERRIVALE, P., in giving judgment, said that the case raised a very interesting question. The wife had resorted to the practice of the court under which it provided proper security for wives' costs. That was an order providing that a sum should be secured and the petitioner's costs be paid out of it, if it were a proper case for the payment to the wife's solicitors of any costs ordered to be paid by the judge at the trial. But the right to that fund did not vest in the wife until the order was made at the trial. It was impossible to make any order as to costs until the hearing of the cause, and the ground on which the fund was paid into court had failed. The conditional provision contained in such an order could not be satisfied. The motion would be dismissed with costs against the petitioner. (By consent the President directed that £78, due under an order made before the suit abated, should be paid out of the fund to the petitioner's solicitor.)

COUNSEL: *Schiller*, K.C. (on the motion only), and *T. Bucknill*, for the petitioner; *Clifford Mortimer* (with him *William Latey*), for the respondent's executor.

SOLICITORS: *Mackrell, Ward & Knight*, for the petitioner; *Scott & Son*, for the respondent's executor.

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

TABLE OF CASES previously reported in current volume.—Part II.

Obituary.

SIR LOUGHLIN O'MALLEY.

Sir Edward Loughlin O'Malley died at his residence at Cuddesdon on Tuesday, the 16th August, at the age of ninety-one. He was educated at Trinity College, Cambridge, and was called to the Bar by the Middle Temple in 1866. He was Attorney-General for Jamaica from 1876 to 1880, and for Hong Kong from 1880 to 1889. He was Chief Justice of the Straits Settlements from 1889 to 1892, and of British Guiana from 1894 to 1898. From 1898 to 1903 he was Chief Judge of the Supreme Consular Court for the Ottoman Empire. After his retirement he served on the Mauritius Royal Commission, 1908-10, and was Chairman of the Oxfordshire Quarter Sessions from 1914 to 1927. He received the honour of Knighthood in 1891.

MAJOR C. E. BREESE.

Major Charles Edward Breese, retired solicitor, of Portmadoc, died from heart failure while grouse shooting near Bala on Monday, the 15th August, at the age of sixty-five. Major Breese, who was admitted a solicitor in 1889, was in practice at Portmadoc, Criccieth and Harlech as Messrs. Charles E. Breese & Co., until about five years ago. He was an Alderman of the Carnarvonshire County Council and was Coalition-Liberal member for Carnarvonshire from 1918 to 1922.

MR. H. WATSON.

Mr. Henry Watson, solicitor and bank agent, of Anstruther, died on Friday, the 12th August, at the age of seventy. He entered the service of the National Bank in 1877, and went to Anstruther as accountant in 1883. He was appointed joint agent in 1893, and became a partner in the firm of Messrs. Mackintosh & Son, solicitors, in 1896.

MR. H. H. SMILEY.

Mr. Hugh Holmes Smiley, solicitor, of Larne, died in hospital on Thursday, the 12th August. He had practised in Larne on his own account since 1897.

Societies.

British Medical Association.

ARSENIC IN THE HAIR AND NAILS.

Professor Sydney Smith read a paper before the Section of Forensic Medicine on 28th July, entitled "Arsenic in the Keratin Tissues." He described the results of some new experimental work, and pointed out that they established certain facts which had not previously been recognised and which would prove to be of great importance in cases where arsenic poison was suspected. The discovery of arsenic in the hair, especially in greater quantities than the tissues of the body contained, would provide strong evidence that arsenic had been administered. It was first of all, however, necessary to know whether the hair could only take up arsenic from the body, or whether it could absorb arsenic from fluid bathing it. In the *Seddon Case* the presence of arsenic in the last three inches of the hair had been ascribed by the defence to administration a year before death, but Sir William Willcox had proved by experiment that it might have been absorbed from blood-stained body fluid that had come in contact with it. On the contrary, in *Rex* v. *Hearn*, the arsenic in the hair of Miss Everard might well have been due to contamination with water which had soaked into the coffin through arsenic-containing soil.

It was important to find out, also, whether the hair and nails absorbed arsenic more freely than the flesh, bones and other tissues, or whether they merely trapped it because they contained no blood-vessels by means of which it could be taken away. The experiments had shown that the keratin tissues took up considerably more arsenic weight for weight than the other tissues—about ten times. Similar figures were found for the nails, and smaller ones for the skin. Hair soaked in a solution of sodium arsenite would absorb arsenic and accumulate it to a concentration much higher than that of the fluid, but it would not accumulate more than a certain concentration whatever the strength of the fluid, nor would it continue to absorb after seventy-two hours. Nails would accumulate arsenic from a surrounding fluid up to about twenty times its concentration. The importance of this observation could hardly be exaggerated, for it had been customary to consider that a higher concentration of arsenic in the keratin tissues than in the intestines was proof that the arsenic had been absorbed during life.

When arsenic was absorbed into growing hair or nails from the fluids of the living body, it would first be found only at the butt ends. If the arsenic were given for a short period and then discontinued, an arsenic-containing band would be found in the hair; if arsenic were administered for a long time, more and more of the hair would contain it until finally, through cutting or falling, the distribution became uniform. The distribution of arsenic in hair did not exactly follow the periods over which it was administered; variations were introduced by the rate of growth of the hair in different persons, the frequency of hair-cutting, the rapidity of excretion, and the fact that hair could take up arsenic through its shaft from sweat or sebaceous fluid, which would contain arsenic if it were in the body. The finding of more arsenic in the butt end of the hair than in the tip would constitute strong evidence that the arsenic had been taken during life, provided that the possibility of external contamination could be excluded. Arsenic, though it could travel readily over the outside of a hair, could not

travel up or down the shaft inside. Sixty per cent. of the arsenic in hair could be dissolved out by prolonged soaking: experiments were still in progress to see whether the whole of it could be removed in this way. It also remained to be seen whether water would dissolve out arsenic deposited in the hair by the body fluids during life, or whether the formation of sulphuretted hydrogen would fix it in an insoluble form. It was possible that the selective affinity of keratin tissues for arsenic was due to their large content of sulphydryl.

Voluntary Euthanasia.

Dr. Killick Millard, the medical officer of health of Leicester, read a paper to the Section of Forensic Medicine on the legalisation of voluntary euthanasia. He quoted from a pamphlet which he had published last October, and read some criticisms. The volume of support he had received from eminent persons in every department of the national life had been, he said, very significant. With the help of a member of the Bar accustomed to Parliamentary draftmanship, he had re-cast the text of his proposed Bill, which provided that it should be lawful for a person to receive and a medical practitioner to administer euthanasia for the purpose of avoiding unnecessary suffering. The applicant for euthanasia must be twenty-one years of age or over and suffering from a painful and incurable disease. Having consulted one of his nearest relatives and to the best of his ability seen that his affairs were in order, he must make application in writing and sign it in person before two witnesses, who must be justices of the peace or hold some professional status. The application would then be forwarded, with two formal medical certificates, one from the medical attendant and the other from a medical practitioner, to a euthanasia referee. These officers would be appointed by the Minister; they must be registered medical practitioners and their fees would be paid, according to a fixed scale, by the applicant. If they granted the application, an interval of ten days must elapse before the euthanasia was carried out. The nearest relative would have a right of appeal to the court, and the proceedings would be held in camera. Only the practitioner named in the permit could carry out the euthanasia, which Dr. Millard suggested in his previous pamphlet would consist of the administration of some form of poison. In the ensuing discussion, strong views were expressed on either side. Dr. Millard can certainly show a considerable volume of support for his revolutionary proposal from persons whose opinion deserves great respect, but public opinion is probably not yet ready to assent to the necessary legislation.

Medico-Legal Exhibition.

In the afternoon the section met at the Royal College of Surgeons and inspected an exhibition of objects of medico-legal interest. Sir William Willcox demonstrated several specimens showing the effects of various poisons on the lining of the stomach. He explained that perchloride of mercury (corrosive sublimate) had a delayed action and was a powerful kidney poison: its immediate effects passed off after twenty-four hours, the patient became irritable and failed to pass urine, and death occurred in five or six days from total suppression of urine. He pointed out that nembutal, together with some of the barbituric acid drugs (most of which are designed to produce sleep or stop pain), had a similar delayed effect on the kidneys. Corrosive sublimate could also cause ulceration and inflammation of the large bowel. Five grains would kill anybody.

Dr. E. Roche Lynch showed specimens of hair which had been produced in evidence in a famous trial, and had been shown to contain arsenic. He demonstrated the arsenical "mirror" and the standard mirror side by side to show how the comparison was made by which the amount of arsenic in hair was established. He also showed photographs taken by the police at the scene of the "City typist" murder, and the safety razor blade in a special holder with which the crime was committed. The razor, which was brought to the police by a witness who found it tucked into the cushions of the seat of an omnibus, was covered with blood which was found to belong to the same group as that of the dead woman, and the fact that this group was the rarest of all the four blood-groups—group AB—made the connexion extremely probable. Some minute hairs had been found on the razor, but the microscope showed that they did not come from the fur collar which the victim had been wearing; they had been identified with the hairs in the fur lining of a pair of gloves found on the accused. Dr. Roche Lynch also showed the chocolates, loaded with white arsenic, which Colonel Armstrong was said to have sent to the solicitor Martin; some home-made pills concocted from diachylon plaster (which contains a high proportion of lead) and intended for use as abortifacients; and some pieces of chupatti (Indian bread) mixed with fine powdered glass. He remarked that, whereas coarsely powdered glass often killed, finely powdered glass was probably harmless.

Rules and Orders.

The Relief Regulation (Amendment) Order, 1932,* dated July 23, 1932, made by the Minister of Health.

Whereas by the Relief Regulation Order, 1930,(†) made by the Minister of Health under the Poor Law Act, 1930,(‡) provision is made in relation to the discharge of the poor law functions of councils of counties and county boroughs in regard to the administration of outdoor relief;

And whereas it is expedient that further provision should be made:

Now therefore the Minister of Health in exercise of his powers under the Poor Law Act, 1930, and of all other powers enabling him in that behalf by this order makes the following regulations.

1. This order may be cited as the Relief Regulation (Amendment) Order, 1932.

2. The Relief Regulation Order, 1930, shall from and after the date of this order be read and have effect as if in lieu of paragraph (2) of article 11 there were substituted the following provision, that is to say—

"(2) An order for the grant of relief other than institutional relief shall not be made for a period exceeding—

(*a*) in the case of an able-bodied man, eight weeks:

Provided that the Relieving Officer shall make a report on the case to the appropriate committee immediately before the expiry of the first four weeks after the date of the order and if the report discloses any material change in the circumstances of the case the committee shall forthwith take the report into their consideration and make any new order which may be necessary;

(*b*) in the case of any other person who has not received relief under an order made at any time within the six weeks preceding the application, eight weeks: and

(*c*) in any other case, fourteen weeks."

Given under the official seal of the Minister of Health this twenty-third day of July, nineteen hundred and thirty-two.

R. H. H. Keenlyside,
(L.S.) Assistant Secretary,
Ministry of Health.

* These regulations supersede the provisional regulations made on the 17th day of May, 1932.

† S.R. & O. 1930 (No. 186), p. 1472. ‡ 20-1 G. 5, c. 17.

The Jointly Certified Institutions (Pensionable Teaching Service) Order, 1932, dated July 30, 1932, made by the Minister of Health under section 1 (1) of the Asylums and Certified Institutions (Officers Pensions) Act, 1918 (8 & 9 Geo. 5, c. 33).

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The Minister of Health in exercise of the powers conferred on him by subsection (1) of section 1 of the Asylums and Certified Institutions (Officers Pensions) Act, 1918, hereby makes the following order—

1.—(1) This order may be cited as the Jointly Certified Institutions (Pensionable Teaching Service) Order, 1932, and shall come into operation forthwith.

(2) In this order—

"the Minister" means the Minister of Health;

"The Act" means the Asylums Officers' Superannuation Act, 1909,(*) as amended by the Asylums and Certified Institutions (Officers Pensions) Act, 1918;

"jointly certified institution" means an institution which is provided and maintained by the council of a county or county borough whether alone or in combination with other such councils and used both as a certified institution under the Mental Deficiency Act, 1913,(†) and as a certified school for defective children under the Education Act, 1921(‡);

"pensionable teaching service" means, in relation to service in a jointly certified institution, such service as will, if excepted under this order, be contributory service under sub-paragraph (ii) of paragraph (*b*) of subsection (1) of section 2 of the Teachers (Superannuation) Act, 1925.(§)

2.—(1) The Minister may, if he thinks fit, on application made to him for that purpose by a person who is, or has been, an established officer in a jointly certified institution, except from the operation of the Act the pensionable teaching service of the applicant in any such institution, and in that event the provisions of the Act shall not apply, and shall be deemed never to have applied, to the applicant while engaged in the service so excepted.

(2) An application under this article shall be made within three months from the date of this Order or from the date on which the applicant becomes employed in pensionable teaching service in a jointly certified institution, whichever date is the

* 9 E. 7, c. 48. † 3-4 G. 5, c. 28. ‡ 11-2 G. 5, c. 51. § 15-6 G. 5, c. 59.

later, or within such longer period as the Minister may in any particular case allow.

Given under the Official Seal of the Minister of Health this thirtieth day of July, nineteen hundred and thirty-two.

(L.S.) *W. A. Ross*,
Assistant Secretary,
Ministry of Health.

Legal Notes and News.

Honours and Appointments.

The King has been pleased to appoint Mr. CHAUDHRI NIAMAT ULLAH to the office of Judge of the High Court of Judicature at Allahabad, in the place of Mr. Guy Ponsonby Boys, who has retired.

Professional Announcement.

(2s. per line.)

The practice of Messrs. WITHINGTON, PETTY and BOUTFLOWER, of Tower Chambers, 30, Spring Gardens, Manchester, has been acquired by ROGER S. KIRKPATRICK and LIONEL W. BIGGS. The name of the firm will in future be Messrs. Withington, Petty & Co. Mr. J. C. Boutflower, M.A. (Oxon), will continue the notarial practice in association with the purchasers.

THE SOLICITORS' MORTGAGE SOCIETY, LTD. (formed by Solicitors for Solicitors), invites particulars of FUNDS or SECURITIES. Apply, The Secretary, 20, Buckingham-street, Strand, W.C.2. Telephone No. Temple Bar 1777.

Wills and Bequests.

Mr. Samuel Henry Stockwood, solicitor, of Westfield, Bridgend, Glam., left estate of the gross value of £30,313, with net personalty £16,609. He left £100 to the Finance Committee of the St. Illtyd's Church, Newcastle; £100 to the Bridgend and District Hospital; £100 to the Porthcawl Rest.

Mr. William May, solicitor, of Send, Surrey, senior partner in the firm of Messrs. Slaughter & May, solicitors, Austin Friars, E.C., Chairman of the Home and Colonial Stores, the Reading Electric Supply Company, and the Thames Valley Electric Supply Company, left £197,083.

JUDICIAL COMMITTEE FEES.

It was announced in the *London Gazette* on Tuesday last that the King in Council has approved an amendment of the Judicial Committee Rules, 1925, whereby the 33⅓ per cent. added to the respective amounts of the fees allowed by Schedule C to the Rules, to agents conducting appeals or other matters before the Judicial Committee is reduced to 25 per cent. as from 13th October next.

COUNTY COURTS JURISDICTION.

An Order in Council which is to be cited as "The County Courts (Extended Jurisdiction) Order in Council, 1932," and which is to come into operation on 1st November, 1932, states that it is now ordered that:—

(1) Actions in which the plaintiff claims a sum exceeding £50 by virtue of the County Courts Act, 1903, shall be tried in the Court in which the action was commenced.

(2) The following Orders shall be revoked:—The County Courts Order in Council, 1924; the County Courts (Extended Jurisdiction) Order in Council, 1927; the County Courts (Extended Jurisdiction) Order in Council, 1928; the County Courts (Extended Jurisdiction) Order in Council, 1930; the County Courts (Extended Jurisdiction) Order in Council, 1931; the County Courts (Extended Jurisdiction No. 2) Order in Council, 1931.

(3) Nothing in this Order shall affect any power to transfer an action from one Court to another under any provision of the County Courts Act, 1888, or of the County Courts Act, 1919.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement Thursday, 25th August, 1932.

	Middle Price 17 Aug. 1932.	Flat Interest Yield.	†Approximate Yield with redemption
English Government Securities.		£ s. d.	£ s. d.
Consols 4% 1957 or after	105½	3 15 10	3 13 0
Consols 2½%	71½	3 9 11	—
War Loan 5% 1929-47 Assented	99½xb	3 11 1	—
War Loan 4½% 1925-45	102½	4 7 10	—
Funding 4% Loan 1960-90	107½	3 14 5	3 11 5
Victory 4% Loan (Available for Estate Duty at par) Average life 31 years	106½	3 15 1	3 12 11
Conversion 5% Loan 1944-64	113½	4 8 1	3 11 11
Conversion 4½% Loan 1940-44	108½	4 2 11	3 5 6
Conversion 3½% Loan 1961 or after	99½	3 10 4	—
Local Loans 3% Stock 1912 or after	84½	3 11 0	—
Bank Stock	311	3 17 2	—
India 4½% 1950-55	101	4 9 1	4 8 4
India 3½% 1931 or after	79	4 8 7	—
India 3% 1948 or after	68	4 8 3	—
Sudan 4½% 1939-73	105	4 5 9	3 12 4
Sudan 4% 1974 Redeemable in part after 1950	104	3 16 11	3 13 10
Transvaal Government 3% Guaranteed 1923-53 Average life 13 years	100	3 0 0	3 0 0
Colonial Securities.			
Canada 3% 1938	97½	3 1 6	3 9 5
*Cape of Good Hope 4% 1916-36	101	3 19 2	—
Cape of Good Hope 3½% 1929-49	95½	3 13 4	3 17 3
Ceylon 5% 1960-70	108	4 12 7	4 9 8
*Commonwealth of Australia 5% 1945-75	99½	5 0 6	5 0 7
Gold Coast 4½% 1956	106	4 4 11	4 1 10
*Jamaica 4½% 1941-71	104	4 6 6	3 18 9
*Natal 4% 1937	101	3 19 2	3 15 1
New South Wales 4½% 1935-45	88½	5 1 8	5 15 7
*New South Wales 5% 1945-65	96½	5 3 8	5 4 5
*New Zealand 4½% 1945	99½xd	4 10 5	4 11 0
*New Zealand 5% 1946	103½	4 16 7	4 12 9
Nigeria 5% 1950-60	111	4 10 1	4 1 9
*Queensland 5% 1940-60	96	5 4 2	5 5 6
*South Africa 5% 1945-75	106½	4 13 11	4 6 9
*South Australia 5% 1945-75	98½	5 1 6	5 1 9
*Tasmania 5% 1945-75	99½	5 0 6	5 0 7
*Victoria 5% 1945-75	98½	5 1 6	5 1 9
*West Australia 5% 1945-75	98½	5 1 6	5 1 9
Corporation Stocks.			
Birmingham 3% 1947 or after	82½	3 12 9	—
*Birmingham 5% 1946-56	112	4 9 3	3 17 6
*Cardiff 5% 1945-65	109	4 11 9	4 1 10
Croydon 3% 1940-60	93	3 4 6	3 7 9
*Hastings 5% 1947-67	111½	4 9 8	3 19 4
Hull 3½% 1925-55	97½	3 11 10	3 13 4
Liverpool 3½% Redeemable by agreement with holders or by purchase	97	3 12 2	—
London County 2½% Consolidated Stock after 1920 at option of Corporation	70xd	3 11 5	—
London County 3% Consolidated Stock after 1920 at option of Corporation	83xd	3 12 3	—
Manchester 3% 1941 or after	82½	3 12 9	—
Metropolitan Water Board 3% "A" 1963-2003	85	3 10 7	3 11 8
Do. do. 3% "B" 1934-2003	85xd	3 10 7	3 11 8
Middlesex C.C. 3½% 1927-47	97	3 12 2	3 15 3
Do. do. 4½% 1950-70	110	4 1 10	3 14 6
Nottingham 3% Irredeemable	81½	3 13 7	—
*Stockton 5% 1946-66	109½	4 11 4	4 1 10
English Railway Prior Charges.			
Gt. Western Rly. 4% Debenture	97	4 2 6	—
Gt. Western Rly. 5% Rent Charge	109½	4 11 4	—
Gt. Western Rly. 5% Preference	69xd	7 5 0	—
L. Mid. & Scot. Rly. 4% Debenture	86½	4 12 6	—
L. Mid. & Scot. Rly. 4% Guaranteed	69½	5 15 1	—
L. Mid. & Scot. Rly. 4% Preference	36½	10 19 2	—
Southern Rly. 4% Debenture	92½	4 6 6	—
Southern Rly. 5% Guaranteed	98xd	5 2 0	—
Southern Rly. 5% Preference	55½xd	9 0 2	—
‡L. & N.E. Rly. 4% Debenture	78½	5 1 11	—
‡L. & N.E. Rly. 4% 1st Guaranteed	60xd	6 13 4	—
‡L. & N.E. Rly. 4% 1st Preference	27½	14 10 11	—

*Not available to Trustees over par.

†In the case of Stocks at a premium, the yield with redemption has been calculated as at the earliest date; in the case of other stocks, as at the latest date.

‡These Stocks are no longer available for trustees, either as strict Trustee or Chancery Stocks, no dividend having been paid on the Company's Ordinary Stocks for the past year.